

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 08, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JESSICA REDWINE, an individual,

Plaintiff,

v.

AMERICAN MEDICAL RESPONSE
NORTHWEST, INC., an Oregon
corporation; and DARREN BRIEHER,
an individual,

Defendants.

No. 2:24-CV-00136-MKD

**ORDER GRANTING
STIPULATED
PROTECTIVE ORDER**

ECF No. 20

The parties have submitted a Proposed Stipulated Protective Order and ER 502(D) and (E) Clawback Agreement to the Court. ECF No. 20. The Court finds good cause under Fed. R. Civ. P. 26(c) to issue an order to protect certain categories of information produced by a party in discovery in this matter to prevent annoyance, embarrassment, oppression, or undue burden or expense.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Proposed Stipulated Protective Order and ER 502(D) and (E) Clawback Agreement, **ECF No. 20**, is **GRANTED**.

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c).¹ It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: (a) the parties’ non-public financial, accounting, commercial, merger and acquisition transactions, proprietary data or applications, or other proprietary or trade secret information; (b) other confidential

¹ The Court notes that this reference is to the Western District of Washington’s local rules. The Eastern District of Washington does not have local rules regarding protective orders.

1 and/or sensitive business information; (c) medical records and bills, and other
2 healthcare records and information pertaining to any party or non-party that would
3 be subject to HIPAA (Health Insurance Portability and Accountability Act of
4 1996) if in possession of a covered entity; (d) sensitive employee files and records
5 pertaining to any non-party, including personnel records and personal medical or
6 financial information; or (e) information otherwise provided protection from
7 disclosure under contract or law.

8 3. SCOPE

9 The protections conferred by this agreement cover not only confidential
10 material (as defined above), but also (1) any information copied or extracted from
11 confidential material; (2) all copies, excerpts, summaries, or compilations of
12 confidential material; and (3) any testimony, conversations, or presentations by
13 parties or their counsel that might reveal confidential material.

14 However, the protections conferred by this agreement do not cover
15 information that is in the public domain or becomes part of the public domain
16 through trial or otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material that
19 is disclosed or produced by another party or by a non-party in connection with this
20 case only for prosecuting, defending, or attempting to settle this litigation.

1 Confidential material may be disclosed only to the categories of persons and under
2 the conditions described in this agreement. Confidential material must be stored
3 and maintained by a receiving party at a location and in a secure manner that
4 ensures that access is limited to the persons authorized under this agreement.

5 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
6 otherwise ordered by the court or permitted in writing by the designating party, a
7 receiving party may disclose any confidential material only to:

8 (a) the receiving party’s counsel of record in this action, as well as
9 employees of counsel to whom it is reasonably necessary to disclose the
10 information for this litigation;

11 (b) the parties to the litigation, including the officers, directors, and
12 employees (including in house counsel) of the receiving party to whom
13 disclosure is reasonably necessary for this litigation, unless the parties agree
14 that a particular document or material produced is for Attorney’s Eyes Only
15 and is so designated;

16 (c) experts and consultants to whom disclosure is reasonably
17 necessary for this litigation and who have signed the “Acknowledgment and
18 Agreement to Be Bound” (Exhibit A);

19 (d) the court, court personnel, and court reporters and their staff;

20 (e) copy or imaging services retained by counsel to assist in the

1 duplication of confidential material, provided that counsel for the party
2 retaining the copy or imaging service instructs the service not to disclose any
3 confidential material to third parties and to immediately return all originals
4 and copies of any confidential material;

5 (f) during their depositions, witnesses in the action to whom
6 disclosure is reasonably necessary and who have signed the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
8 otherwise agreed by the designating party or ordered by the court. Pages of
9 transcribed deposition testimony or exhibits to depositions that reveal
10 confidential material must be separately bound by the court reporter and may
11 not be disclosed to anyone except as permitted under this agreement;

12 (g) the author or recipient of a document containing the
13 information or a custodian or other person who otherwise possessed or knew
14 the information.

15 4.3 Filing Confidential Material. Before filing confidential material or
16 discussing or referencing such material in court filings, the filing party shall confer
17 with the designating party, to determine whether the designating party will remove
18 the confidential designation, whether the document can be redacted, or whether a
19 motion to seal or stipulation and proposed order is warranted. During the meet and
20 confer process, the designating party must identify the basis for sealing the specific

1 confidential information at issue, and the filing party shall include this basis in its
2 motion to seal, along with any objection to sealing the information at issue. Local
3 Civil Rule 5(g) sets forth the procedures that must be followed and the standards
4 that will be applied when a party seeks permission from the court to file material
5 under seal. A party who seeks to maintain the confidentiality of its information
6 must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the
7 party filing the motion to seal. Failure to satisfy this requirement will result in the
8 motion to seal being denied, in accordance with the strong presumption of public
9 access to the Court's files.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each party or non-party that designates information or items for protection under
13 this agreement must take care to limit any such designation to specific material that
14 qualifies under the appropriate standards. The designating party must designate for
15 protection only those parts of material, documents, items, or oral or written
16 communications that qualify, so that other portions of the material, documents,
17 items, or communications for which protection is not warranted are not swept
18 unjustifiably within the ambit of this agreement.

19 Mass, indiscriminate, or routinized designations are prohibited.

20 Designations that are shown to be clearly unjustified or that have been made for an

1 improper purpose (e.g., to unnecessarily encumber or delay the case development
2 process or to impose unnecessary expenses and burdens on other parties) expose
3 the designating party to sanctions.

4 If it comes to a designating party's attention that information or items that it
5 designated for protection do not qualify for protection, the designating party must
6 promptly notify all other parties that it is withdrawing the mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in
8 this agreement (see, e.g., second paragraph of section 5.2(b) below), or as
9 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
10 protection under this agreement must be clearly so designated before or when the
11 material is disclosed or produced.

12 (a) Information in documentary form: (e.g., paper or electronic
13 documents and deposition exhibits, but excluding transcripts of depositions
14 or other pretrial or trial proceedings), the designating party must affix the
15 word "CONFIDENTIAL" to each page that contains confidential material.

16 If only a portion or portions of the material on a page qualifies for
17 protection, the producing party also must clearly identify the protected
18 portion(s) (e.g., by making appropriate markings in the margins).

19 (b) Testimony given in deposition or in other pretrial proceedings:
20 the parties and any participating non-parties must identify on the record,

1 during the deposition or other pretrial proceeding, all protected testimony,
2 without prejudice to their right to so designate other testimony after
3 reviewing the transcript. Any party or non-party may, within fifteen days
4 after receiving the transcript of the deposition or other pretrial proceeding,
5 designate portions of the transcript, or exhibits thereto, as confidential. If a
6 party or non-party desires to protect confidential information at trial, the
7 issue should be addressed during the pre-trial conference.

8 (c) Other tangible items: the producing party must affix in a
9 prominent place on the exterior of the container or containers in which the
10 information or item is stored the word “CONFIDENTIAL.” If only a
11 portion or portions of the information or item warrant protection, the
12 producing party, to the extent practicable, shall identify the protected
13 portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
15 failure to designate qualified information or items does not, standing alone, waive
16 the designating party’s right to secure protection under this agreement for such
17 material. Upon timely correction of a designation, the receiving party must make
18 reasonable efforts to ensure that the material is treated in accordance with the
19 provisions of this agreement.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1 Timing of Challenges. Any party or non-party may challenge a
2 designation of confidentiality at any time. Unless a prompt challenge to a
3 designating party's confidentiality designation is necessary to avoid foreseeable,
4 substantial unfairness, unnecessary economic burdens, or a significant disruption
5 or delay of the litigation, a party does not waive its right to challenge a
6 confidentiality designation by electing not to mount a challenge promptly after the
7 original designation is disclosed.

8 6.2 Meet and Confer. The parties must make every attempt to resolve any
9 dispute regarding confidential designations without court involvement. Any
10 motion regarding confidential designations or for a protective order must include a
11 certification, in the motion or in a declaration or affidavit, that the movant has
12 engaged in a good faith meet and confer conference with other affected parties in
13 an effort to resolve the dispute without court action. The certification must list the
14 date, manner, and participants to the conference. A good faith effort to confer
15 requires a face-to-face meeting or a telephone conference.

16 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
17 court intervention, the designating party may file and serve a motion to retain
18 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule
19 5(g), if applicable). The burden of persuasion in any such motion shall be on the
20 designating party. Frivolous challenges, and those made for an improper purpose

(e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the

1 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
2 all unauthorized copies of the protected material, (c) inform the person or persons
3 to whom unauthorized disclosures were made of all the terms of this agreement,
4 and (d) request that such person or persons execute the “Acknowledgment and
5 Agreement to Be Bound” that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

8 When a producing party gives notice to receiving parties that certain
9 inadvertently produced material is subject to a claim of privilege or other
10 protection, the obligations of the receiving parties are those set forth in Federal
11 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
12 whatever procedure may be established in an e-discovery order or agreement that
13 provides for production without prior privilege review. The parties agree to the
14 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein. The
15 parties agree to protection of privileged and otherwise protected documents against
16 claims of waiver (including as against third parties and in other federal and state
17 proceedings) as follows:

18 (a) The disclosure or production of documents by a producing party
19 subject to a legally recognized claim of privilege, including without limitation the
20 attorney-client privilege and the work-product doctrine, to a receiving party, shall

1 in no way constitute the voluntary disclosure of such document.

2 (b) The inadvertent disclosure or production of any document in this
3 action shall not result in the waiver of any privilege, evidentiary protection, or
4 other protection associated with such document as to the receiving party or any
5 third parties, and shall not result in any waiver, including subject matter waiver, of
6 any kind.

7 (c) If, during the course of this litigation, a party determines that any
8 document produced by another party is or may reasonably be subject to a legally
9 recognizable privilege or evidentiary protection (“Protected Document”):

10 (i) the receiving party shall: (A) refrain from reading the Protected
11 Document any more closely than is necessary to ascertain that it is
12 privileged or otherwise protected from disclosure; (B) immediately notify
13 the producing party in writing that it has discovered documents believed to
14 be privileged or protected; (C) specifically identify the Protected Documents
15 by Bates number range or hash value; and, (D) within ten days of discovery
16 by the receiving party, return, sequester, or destroy all copies of such
17 Protected Documents, along with any notes, abstracts, or compilations of the
18 content thereof. To the extent that a Protected Document has been loaded
19 into a litigation review database under the control of the receiving party, the
20 receiving party shall have all electronic copies of the Protected Document

1 extracted from the database. Where such Protected Documents cannot be
2 destroyed or separated, they shall not be reviewed, disclosed, or otherwise
3 used by the receiving party. Notwithstanding, the receiving party is under
4 no obligation to search or review the producing party's documents to
5 identify potentially privileged or work product Protected Documents.

6 (ii) If the producing party intends to assert a claim of privilege or
7 other protection over documents identified by the receiving party as
8 Protected Documents, the producing party will, within ten days of receiving
9 the receiving party's written notification described above, inform the
10 receiving party of such intention in writing and shall provide the receiving
11 party with a log for such Protected Documents that is consistent with the
12 requirements of the Civil Rules, setting forth the basis for the claim of
13 privilege or other protection. In the event that any portion of a Protected
14 Document does not contain privileged or protected information, the
15 producing party shall also provide to the receiving party a redacted copy of
16 the document that omits the information that the producing party believes is
17 subject to a claim of privilege or other protection.

18 (d) If, during the course of this litigation, a party determines it has
19 produced a Protected Document:

20 (i) the producing party may notify the receiving party of such

1 inadvertent production in writing, and demand the return of such documents.

2 Such notice shall be in writing; however, it may be delivered orally on the
3 record at a deposition, promptly followed up in writing. The producing
4 party's written notice will identify the Protected Document inadvertently
5 produced by Bates number range or hash value, the privilege or protection
6 claimed, and the basis for the assertion of the privilege and shall provide the
7 receiving party with a log for such Protected Documents that is consistent
8 with the requirements of the Civil Rules, setting forth the basis for the claim
9 of privilege or other protection. In the event that any portion of the
10 Protected Document does not contain privileged or protected information,
11 the producing party shall also provide to the receiving party a redacted copy
12 of the document that omits the information that the producing party believes
13 is subject to a claim of privilege or other protection.

14 (ii) The receiving party must, within ten days of receiving the
15 producing party's written notification described above, return, sequester, or
16 destroy the Protected Document and any copies, along with any notes,
17 abstracts, or compilations of the content thereof. To the extent that a
18 Protected Document has been loaded into a litigation review database under
19 the control of the receiving party, the receiving party shall have all electronic
20 copies of the Protected Document extracted from the database.

1 (e) To the extent that the information contained in a Protected Document
2 has already been used in or described in other documents generated or maintained
3 by the receiving party prior to the date of receipt of written notice by the producing
4 party as set forth in paragraphs (c)(ii) and d(i), then the receiving party shall
5 sequester such documents until the claim has been resolved. If the receiving party
6 disclosed the Protected Document before being notified of its inadvertent
7 production, it must take reasonable steps to retrieve it.

8 (f) The receiving party's return, sequestering, or destruction of Protected
9 Documents as provided herein will not act as a waiver of the requesting party's
10 right to move for the production of the returned, sequestered, or destroyed
11 documents on the grounds that the documents are not, in fact, subject to a viable
12 claim of privilege or protection. However, the receiving party is prohibited and
13 estopped from arguing that:

14 (i) the disclosure or production of the Protected Documents acts as
15 a waiver of an applicable privilege or evidentiary protection;

16 (ii) the disclosure of the Protected Documents was not inadvertent;

17 (iii) the producing party did not take reasonable steps to prevent the
18 disclosure of the Protected Documents; or

19 (iv) the producing party failed to take reasonable or timely steps to
20 rectify the error.

1 (g) Either party may submit Protected Documents to the Court under seal
2 for a determination of the claim of privilege or other protection. The producing
3 party shall preserve the Protected Documents until such claim is resolved. The
4 receiving party may not use the Protected Documents for any purpose absent this
5 Court's order.

6 (h) Upon a determination by the Court that the Protected Documents are
7 protected by the applicable privilege or evidentiary protection, and if the Protected
8 Documents have been sequestered rather than returned or destroyed by the
9 receiving party, and subject to the exceptions outlined in Paragraph 10 below, the
10 Protected Documents shall be returned or destroyed within 10 days of the Court's
11 order. The Court may also order the identification by the receiving party of
12 Protected Documents by search terms or other means.

13 (i) Nothing contained herein is intended to, or shall serve to limit a
14 party's right to conduct a review of documents, data (including electronically
15 stored information), and other information, including without limitation, metadata,
16 for relevance, responsiveness, and/or the segregation of privileged and/or protected
17 information before such information is produced to another party.

18 (j) By operation of the parties' agreement, the parties are specifically
19 afforded the protections of Evid. R. 502(e).

20 10. NON TERMINATION AND RETURN OF DOCUMENTS

1 (a) Within 60 days after the termination of this action, including all
2 appeals, each receiving party must return all confidential material to the producing
3 party, including all copies, extracts and summaries thereof. Alternatively, the
4 parties may agree upon appropriate methods of destruction.

5 (b) If Confidential material or Protected Documents have been loaded
6 into any litigation review database, the attorney for the party using such database
7 shall have the responsibility of ensuring that all such Confidential material or
8 Protected Documents, including all associated images and native files, are
9 extracted from such databases (including any associated staging databases) and
10 destroyed. “Destroyed” shall mean deletion of documents from all databases,
11 applications, and/or file systems in a manner such that they are not readily
12 accessible without the use of specialized tools or techniques typically used by a
13 forensic expert.

14 (c) Notwithstanding the preceding paragraph, counsel are entitled to
15 retain one archival copy of all documents filed with the Court, trial, deposition, and
16 hearing transcripts, correspondence, deposition and trial exhibits, expert reports,
17 attorney work product, discovery requests and responses, and consultant and expert
18 work product, even if such materials contain confidential material. Such copies
19 shall remain subject to the terms of this Protective Order.

20 (d) The parties, counsel of record for the parties, and experts or

1 consultants for a party shall not be required to return or to destroy any Confidential
2 material or Protected Documents to the extent such information is (i) stored on
3 media that is generally considered not reasonably accessible, such as disaster
4 recovery backup tapes, or (ii) only retrievable through the use of specialized tools
5 or techniques typically used by a forensic expert; provided that to the extent any
6 Confidential material or Protected Documents are not returned or destroyed due to
7 the foregoing reasons, such Confidential material or Protected Documents shall
8 remain subject to the confidentiality obligations of this Protective Order.

9 The confidentiality obligations imposed by this agreement shall remain in
10 effect until a designating party agrees otherwise in writing or a court orders
11 otherwise.

12 11. COMPUTATION OF TIME

13 The computation of any period of time prescribed or allowed by this Order
14 shall be governed by the provisions for computing time set forth in Civil Rule 6.

15 12. EFFECT OF STIPULATION

16 Once all parties have agreed to this Stipulation, they shall treat it as binding

17 **IT IS FURTHER ORDERED** that pursuant to Fed. R. Evid. 502(d), the
18 production of any documents, electronically stored information (ESI) or
19 information, whether inadvertent or otherwise, in this proceeding shall not, for the
20 purposes of this proceeding or any other federal or state proceeding, constitute a

1 waiver by the producing party of any privilege applicable to those documents,
2 including the attorney-client privilege, attorney work-product protection, or any
3 other privilege or protection recognized by law. This Order shall be interpreted to
4 provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions
5 of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or
6 shall serve to limit a party's right to conduct a review of documents, ESI or
7 information (including metadata) for relevance, responsiveness and/or segregation
8 of privileged and/or protected information before production. Information
9 produced in discovery that is protected as privileged or work product shall be
10 immediately returned to the producing party.

11 **IT IS SO ORDERED.** The District Court Executive is directed to file this
12 order and provide copies to the parties.

13 DATED November 8, 2024.

14 s/Mary K. Dimke

MARY K. DIMKE

15 UNITED STATES DISTRICT JUDGE
16
17
18
19
20

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Eastern District of Washington on _____, 2024 in the case of
Jessica Redwine v. American Medical Response Northwest, Inc. and Darren
Brierher, Case No. 2:24-cv-00136-MKD.

I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is
subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Eastern District of Washington for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action.

DATED: _____

1 _____
SIGNATURE

2 _____
3 PRINTED NAME

4 _____
CITY AND STATE WHERE SWORN/SIGNED